IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 22834 of 2006(R)

PETITIONER:

P.S. PRADEEP KUMAR, AGED 47 YEARS,
S/O.LATE K.SANKUNNY, A/17, N.G.O. QUARTERS,
SILVER HILLS, KOZHIKODE-12,
PROJECT MANAGER, DIST.PROJECT MANAGEMENT UNIT,
KERALA RURAL WATER SUPPLY AND SANITATION AGENCY,
PALAKKAD.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT, WATER RESOURCES (W.S.B) DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE KERALA RURAL WATER SUPPLY AND
SANITATION AGENCY, III FLOOR, P.T.C.TOWERS,
S.S.KOVIL ROAD, THAMPANOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM) FOR R2
SRI.N.ARJUNAN PILLAI
GOVERNMENT PLEADER, SRI BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1 TRUE COPY OF CERTIFICATE ISSUED BY THE KERALA SOAPS AND OILS LTD TO THE PETITIONER DATED 12/07/2000.

EXT.P2 TRUE COPY OF CERTIFICATE ISSUED BY THE KERALA SOAPS AND OILS LTD TO THE PETITIONER DATED 15/09/2000.

EXT.P3 TRUE COPY OF JUDGMENT DATED 17/06/2005 IN WP(C) NO.3090 OF 2005 OF THIS HONOURABLE COURT.

EXT.P4 TRUE COPY OF G.O.(Rt) NO.904/2005/WRD ISSUED BY R1 DATED 1/8/2005

EXT.P5 TRUE COPY OF LAST PAY CERTIFICATE DATED 15/11/2005 ISSUED BY THE KERALA SOAPS AND OILS LTD.

EXT.P6 TRUE COPY OF LETTER DATED 26/12/2005 ISSUED BY THE SECOND RESPONDENT

EXT.P7 TRUE COPY OF LETTER DATED 03/01/2006 ISSUED BY THE KERALA SOAPS AND OILS LTD TO THE SECOND RESPONDENT

EXT.P8 TRUE COPY OF RELEVANT PAGES OF THE QUARTERLY REPORT SUBMITTED BY THE MONITORING AND EVALUATION WING OF KRWSA (JANUARY TO MARCH 2006)

EXT.P9 TRUE COPY OF RELAVANT PAGE OF THE MONTHLY REPORT APRIL 2006 PREPARED BY THE MONITORING AND EVALUATION WING OF KRWSA (JANUARY TO MARCH 2006)

EXT.P10 TRUE COPY OF THE MONTHLY REPORT MAY 2006 BY THE MONITORING AND EVALUATION WING OF KRWSA (JANUARY TO MARCH 2006)

EXT.P11 TRUE COPY OF RELAVANT PAGE OF THE MONTHLY REPORT OF JUNE 2006 BY THE MONITORING AND EVALUATION WING OF KRWSA (JANUARY TO MARCH 2006)

EXT.P12 TRUE COPY OF LETTER OF THE PETITIONER WRITTEN TO THE EXECUTIVE DIRECTOR OF THE MONITORING AND EVALUATION WING OF KRWSA (JANUARY TO MARCH 2006) DATED 06/05/2006

EXT.P13 TRUE COPY OF LETTER DATED 14/07/2006 WRITTEN BY THE PETITIONER TO THE EXECUTIVE DIRECTOR OF THE SECOND RESPONDENT AGENCY

EXT.P14 TRUE COPY OF THE ADVERTISEMENT THAT APPEARED IN THE MATHRUBHUMI DATED 20/07/2006

EXT.P15 TRUE COPY OF REPRESENTATION DATED 26/07/2006

EXT.P16 TRUE COPY OF ORDER OF THE SECOND RESPONDENT DATED 04/08/2006.

EXT.P17 TRUE COPY OF REPRESENTATION DATED 05/08/2006 SUBMITTED BY THE PETITIONER.

EXT.P18 TRUE COPY OF THE REPRESENTATION DATED 08/08/2006 SUBMITTED BY THE PETITIONER

EXT.P19 TRUE COPY OF THE LETTER DATED 11/11/2005 SENT BY THE PETITIONER TO THE MANAGER (OPERATIONS), OF THE SECOND RESPONDENT AGENCY.

EXT.P20 TRUE COPY OF THE PROCEEDINGS OF THE DIRECTOR, FINANCE AND ADMINISTRATION, OF THE SECOND RESPONDENT AGENCY DATED 17/01/2006.

EXT.P21 THE LETTER GIVEN TO THE SECOND RESPONDENT, EXECUTIVE DIRECTOR EXPLAINING THE GRIEVANCES OF THE PETITIONER REGARDING THE ANOMALY IN SALARY DATED 30/08/2005

EXT.P22 TRUE COPY OF THE CORRESPONDENCE WITH THE PROJECT MANAGER (IN CHARGE) AND THE PETITIONER DATED 16/08/2006.

EXT.P23 TRUE COPY OF THE CORRESPONDENCE WITH THE PROJECT MANAGER (IN CHARGE) AND THE PETITIONER DATED 23/08/2006.

EXT.P24 TRUE COPY OF THE CORRESPONDENCE WITH THE PROJECT MANAGER (IN CHARGE) AND THE PETITIONER DATED 28/09/2006.

EXT.P25 TRUE COPY OF THE CORRESPONDENCE WITH THE PROJECT MANAGER (IN CHARGE) AND THE PETITIONER DATED 04/10/2006.

EXT.P26 TRUE COPY OF THE RELEVANT PAGES OF THE MOA AND BYELAW OF KRWSA

EXT.P27 TRUE COPY OF THE GENERAL SALARY STRUCTURE OF KRWSA

EXT.P28 TRUE COPY OF THE RELEVANT PAGES OF THE STATUS REPORT SUBMITTED BY THE PETITIONER TO THE WORLD BANK REVIEW MISSION DATED 23/03/2006

EXT.P29 TRUE COPY OF THE RELEVANT PAGES OF THE PROJECT APPRAISAL DOCUMENT PREPARED BY THE WORLD BANK

EXT.P30 TRUE COPY OF THE RELEVANT PAGES OF THE MONTHLY REPORT, JANUARY 2006 PREPARED BY THE M&E DEPARTMENT OF KRWSA

EXT.P31 TRUE COPY OF THE INTERNAL AUDIT REPORT (APRIL 2005 TO DECEMBER 2005), PREPARED BY THE INTERNAL AUDIT WING OF THE SECOND RESPONDENT AGENCY.

EXT.P32 TRUE COPY OF THE INTERNAL AUDIT REPORT (JANUARY 2006 TO MARCH 2006) PREPARED BY THE INTERNAL AUDIT WING OF THE SECOND RESPONDENT AGENCY.

EXT.P33 TRUE COPY OF THE TRIAL BALANCE FOR THE PERIOD ENDING MARCH 2006.

EXT.P34 TRUE COPY OF THE LETTER DATED 08/08/2006 ISSUED FROM THE HON'BLE MINISTER OF WATER RESOURCES THROUGH HIS PRIVATE SECRETARY.

EXT.P35 TRUE COPY OF THE COMMUNICATION DATED 04/10/2006 ISSUED FROM THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P36 TRUE COPY OF THE RELEVANT PORTION OF THE MALAYALA MANORAMA DAILY DATED 01/10/2006.

RESPONDENT'S EXTS:-

EXT.R2(a) TRUE COPY OF THE LETTER NO.25301/B2/2004/WRD DT.09/02/2005

EXT.R2 (b) TRUE COPY OF THE LAST PAY CERTIFICATE DATED 18/10/2001 ISSUED BY THE MANAGING DIRECTOR OF KERALA SOAPS AND OILS LTD., HIS PARENT ORGANISATION

EXT.R2 (c) TRUE COPY OF THE LETTER DATED 01/09/2005

EXT.R2 (d) TRUE COPY OF THE LETTER DATED 26/12/2005

EXT.R2 (e) TRUE COPY OF THE LETTER DATED 24/02/2006

EXT.R2 (f) TRUE COPY OF THE LETTER DATED 08/11/2005 ISSUED TO THE PETITIONER TO MAKE PAYMENT TO THE SUPPORT ORGANISATION

EXT.R2 (g) TRUE COPY OF THE LETTER DATED 02/09/2006 ADDRESSED TO THE PRIVATE SECRETARY TO THE MINISTER FOR WATER RESOURCES.

\\TRUE COPY //

P.A TO JUDGE

S. SIRI JAGAN, J.

W.P. (C) No. 22834 OF 2006 R

Dated this the 20th day of December, 2006

J U D G M E N T

The petitioner, who is an employee of the Kerala Soaps and Oils Ltd., was appointed on deputation as a Project Manager in the Jalanidhi Project of the 2nd respondent for a period of one year, which expired on 8.8.2006. By Ext.P16 order, the petitioner was informed by the Executive Director of the 2nd respondent as follows:

> *"As per the GO read above, the deputation of Sri.P.S.Pradeep Kumar, Materials Manager, Kerala Soaps and Oils Limited, Kozhikode as Project Manager, DPMU, Palakkad expires in the AN of 8.8.2006. The Agency has no intention to extend the deputation of Sri.P.S.Pradeep Kumar. Accordingly he is relieved from KRWSA on the AN of 8.8.2006 and is reverted back to his parent organization. He will handover charge to Smt.P.V.Sini, Deputy Project Manager, DPMU, Palakkad and she will hold full additional charge of the Project manager, DPMU, Palakkad until further arrangements. Sri.P.S.Pradeep Kumar will report to his parent organization."*

The same is under challenge in this writ petition. According to the petitioner, this is an act of victimization for not dancing to the tune of the Manager (Operations) of the 2nd respondent. In the counter affidavit of the 2nd respondent, the 2nd respondent has given a specific reason for not extending the period of deputation of the petitioner. The same is in

the following words in paragraphs 8, 10 and 11.

In paragraph 8, it is stated thus:

> *"As per the assessment made by the Director(Operations) of this respondent, who is the Controlling Officer of the Project Manages of Thrissur, Palakkad, Malappuram and Kozhikode the performance of the petitioner as District Project Manager had been below average when compared with other District Project Managers of other Districts."*

Paragraph 10 reads thus:

> *"The performance of the petitioner was found to be below average and hence KRWSA has decided not to grant further extension of deputation. In the above situation, KRWSA is left with no option but to take suitable candidates on deputation after assessing their capability, experience and qualification. … The judgment of Honourable High Court in ExhibitP3 is only to give deputation on humanitarian grounds."*

In paragraph 11, it is stated thus:

> *" Project Managers are handling crores of rupees. Such a post cannot be filled up by a person belonging to an organization which is defunct and moreover with a person with below average performance. … The decision not to extend the period of deputation of the petitioner taken by this respondent is only an administrative decision in the interest of the project and of the organization."*

2. Since the respondents themselves have given a specific reason of inefficiency of the petitioner for not extending the deputation period of the petitioner, the petitioner invites me to look into the question as to whether the reasons stated by the 2nd respondent not to extend the

period of deputation of the petitioner would stand legal scrutiny.

3. Before going into the issues involved, it would be helpful to recall the history of the petitioner's service with the 2nd respondent. While working as an employee of the Kerala Soaps and Oils Ltd., which is a company fully owned by the 1st respondent, State of Kerala, pursuant to applications invited by the 2nd respondent for appointment on deputation basis to the post of Project Manager, the petitioner applied through proper channel. He was selected along with another person for appointment and deputed for training. He underwent the training and thereafter in anticipation of formal appointment as the Project Manager, he was directed by the 2nd respondent to accompany the World Bank Review Mission. In the orders issued for that purpose, the petitioner was referred to as the District Project Manager - designate. However, although the person selected along with the petitioner was appointed, the petitioner was not given appointment. Since the petitioner's representation in this regard did not evoke any favourable reply, the petitioner filed W.P.(C) No.3090/05 to declare that the petitioner is entitled to be appointed as Project Manager of the 2nd respondent at Palakkad pursuant to the selection process undergone by him. In that writ petition, the 2nd respondent took a contention that he cannot be so appointed on deputation since the parent company of the petitioner, namely, Kerala Soaps and Oils Ltd., is a sick unit. Considering the contention of the 2nd respondent, I passed the following

directions in Ext.P3 judgment in that writ petition:

> *" 3. Admittedly, the petitioner came out successful after competing with several other similarly placed persons. No provision of law has been brought to my notice to the effect that when the parent organization becomes sick, a person can be refused appointment on deputation, even after proper selection for the purpose. The 1st respondent has no contention that the vacancy to which the petitioner has been selected is not existing or that they do not want to fill up that post. They also do not now contend that the petitioner is not qualified or fit enough to hold the post.*
>
> *4. When a fully Government owned company becomes sick, the Government has at least a moral obligation to see that, if possible, the employees of that company can be accommodated in similar employments in either Government service or other government organization. In this case, the 1st respondent-Government has an opportunity to save at least one such employee from destitution. Therefore, I am of opinion that it is only proper that the 1st respondent gives appointment to the petitioner pursuant to Ext.P6. It is also not contended before me that the said Kerala Soaps and Oils Limited has been wound up. The said company is still functioning. That being so, under law also, there is no justification for denying employment to the petitioner.*
>
> *5. In the above circumstances, there will be a direction to the 1st respondent to appoint the petitioner as District Project Manager in the Jalanidhi Project o the 2nd respondent pursuant to Ext.P6 order. This shall be done within one month from the date of receipt of a copy of this judgment.*
>
> *The writ petition is disposed of as above, without any order as to costs."*

This decision has become final as the same was not taken in appeal. It is pursuant to the said judgment that the petitioner was

appointed on deputation as District Project Manager of the Jalanidhi Project of the 2nd respondent at Palakkad by Ext.P4 order. The petitioner contends that as stated in paragraph 8 of the writ petition, normally the Project Manager so appointed on deputation is given extension for at least two years. He cites several examples in this regard. Paragraph 8 of the writ petition reads as follows:

> *"In Wayanad District, Mr.Ali Agsar Pasha, the Project Manager had already worked for two years and as he is promoted as ADM, he is not willing to continue. In Kozhikode, the Project Manger Mr.Soman, though did not apply formally for extension, has been granted the same. In Thrissur, the Project Manager Mr.Govindankutty had been working for the last four years before he got a promotion and left. In Malappuram District, Mr.Narendra Dev, who has been working as Project Manager for more than 5 years on deputation from Kerala Water Authority is sailing smooth. In Kannur, Mr.K.V.Narayanan who got selected along with the petitioner has been granted extension for yet another year. In Palakad DPMU itself, Accounts Officer Mr.M.P.Soman, the only other deputationist is granted four extensions in a row and is continuing. Thus it is clear that the 2nd respondent agency was employing Project Managers at least for two years on a trot and the same was necessary for a smooth running of the Project."*

On these averments the petitioner has filed this writ petition seeking the following reliefs:

> (i) to issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents to consider the petitioner for the grant of extension of his term in the light of Exts.P3 and P4;
>
> (ii) to issue a writ of mandamus or other appropriate writ, order or direction commanding the

> second respondent not to proceed further pursuant to the advertisement with fresh appointment to the post of Project Manager, Jalanidhi, District Project Management Unit, Palakkad District by replacing the petitioner pending disposal of the writ petition.

4. Since in the counter affidavit, the 2nd respondent took a specific stand that it is because of the inefficiency of the petitioner that it was decided not to extend the deputation period of the petitioner, which reason was first made known to the petitioner only in the counter affidavit, the petitioner has sought to challenge the said contention by producing several documents along with his reply affidavit. He points out that in Ext.P32, which is the internal audit report of Palakkad District Project Management unit for the period from January, 2006 to March 2006, it has been specifically mentioned as follows:

> *"The DPMU Accounts wing has maintained separate Excel Sheet records for various accounting records, which is not available through FMIS. This is a matter of appreciation."*

5. The petitioner submits that since he was the Project Manager of Accounts, this would specifically relate to him. He would also rely on Ext.P30, which is the monthly report for January 2006 of various projects of the 2nd respondent. The petitioner would point out that going by Ext.P30, the project, in which the petitioner was a part, was second only to the Calicut project in the matter of performance. He points out that as is evident from Ext.P30, in Palakkad project alone, the percentage of completion was 100% and in three other projects, which

was under consideration in Ext.P30, the percentage of completion was below 100%. It is also the case of the petitioner that in Ext.P35, minutes of the State Level Review Meeting of Rain Water Harvesting Campaign held on 12.9.2006 at the Conference Hall of the 2nd respondent, it has been specifically mentioned as follows:

> *" All works of Wayanad, Idukki, Palakkad, Kannur and Ernakulam districts have been completed. So it was decided to forward a word of appreciation to these districts."*

The petitioner would contend that these words of appreciation would go to show that the contention regarding inefficiency of the petitioner who was a part of the said project is without any basis. In paragraph 6 of his reply affidavit, he specifically states as follows:

> *" The attempt of the second respondent is clearly to belittle the petitioner so as to mislead this Hon'ble court. It is submitted that the assessment alleged to have been made by Director(Operations) of the second respondent that the performance of the petitioner as District Project manager is "below average" when compared with the other District Project Managers of other districts is clearly false, misleading and defamatory. It is submitted that the petitioner has every reason to believe that the Director (Operations) has colluded with the other officials of the 2nd respondent agency who are particular to see that the term of the petitioner is not extended in spite of excellent performance, which is evident from the statics and records. The petitioner has every reason to suspect that the assessment alleged to have been made by the Director (Operations) was made after the completion of the term of the petitioner on 10.8.06 just to use it as a handle to refuse extension. <u>At no point of time the petitioner was given a memo, warning or instruction regarding the performance of the</u>*

> *petitioner. The respondents could not have done that as the progress of the project and the performance of the petitioner were par excellence."*
>
> (Emphasis supplied)

6. He would contend that at no point of time, the petitioner was given a memo, warning or instruction regarding the performance of the petitioner. The petitioner would point out that the reason for the petitioner becoming persona non grata is evident from Ext.P19 read with Ext.R2(f). He contends that by Ext.R2(f), the Manager(Operations) of the 2nd respondent directed the petitioner to settle the accounts of M/s.Maithri SO, within five days and to report compliance. The petitioner submits that since it was not legally possible to settle the accounts of the party, he issued Ext.P19 to the Manager(Operations), stating so and requesting for written orders from Executive Director or Director(Finance), if the Manager(Operations) if he still wanted the petitioner to release payment to the said party. The petitioner submits that this stand of the petitioner, which was taken in the best interest of the organization was the reason for attracting the wrath of the powers that be in the 2nd respondent which resulted in Ext.P16. The petitioner submits that in so far as the petitioner has not been issued with any memo or warning regarding his inefficiency or want of improvement the petitioner could not have been subjected to such treatment as done by the 2nd respondent by Ext.P16. The petitioner further points out that by

Ext.P14 the 2nd respondent has issued notification inviting applications for appointment of Project Managers in Calicut, Palakkad and Wayanad on deputation. He points out that as admitted by the 2nd respondent themselves in paragraph 2 of the counter affidavit the Jalanidhi Project is to be completed by December 2007 and it would not be in the interest of the respondents to recruit new Project Managers, train them and appoint them as Project Managers for such a short period since most of the balance one year period would be required to complete the selection and training of the new Project Manager in the petitioner's place. The petitioner would contend that for all these reasons, Ext.P16 order smacks of victimization and, therefore, is liable to be quashed and the respondents are liable to be directed to extend the period of deputation of the petitioner till the end of the project. The petitioner also relies on an unreported judgment of this court in OP.No.8562/02, wherein it has been held that where inefficiency is cited as a reason for terminating deputation then the files should show that the petitioner was served with memos or notices pointing out inefficiencies in performance. In W.A. No.2006/02, this judgment was upheld. The petitioner also points out that in the judgment of the Supreme Court in ***Union of India and another Vs. V.Ramakrishnan and others*** reported in 2005 (8) SCC 394 it has been held that although a deputationer has no legal right to continue in the post, term of deputation should not be curtailed except on such grounds as unsuitability or unsatisfactory performance, failing

which the reversion can be questioned when the same is mala fide.

7. As I have said, the 2nd respondent has chosen to file a counter affidavit, in which their specific case is that the petitioner's deputation was not extended because as per the assessment made by the Director(Operations) of the 2nd respondent, the performance of the petitioner as District Project Manager had been below average, when compared with other District Project Managers of other districts. Despite this contention, the 2nd respondent has not chosen to produce any document whatsoever which proves their contention. They have also not chosen to prove the same by producing the files relating to the subject. Their contention is that the various exhibits relied on by the petitioner as appreciation of his work is assessment of the performance of the project as a whole and not individual performance of the petitioner alone. The counsel for the 2nd respondent would argue that that cannot be taken as a reflection of the petitioner's efficiency especially in view of the fact that his controlling officer has specifically found the petitioner's performance to be blow average, relying on Ext.R2(g) reply to the Private Secretary to the Minister of Water Resources in reply to Ext.P34 letter conveying the desire of the Minister that the matter of continuance on deputation of the petitioner may be re-examined in the light of Ext.P3 judgment of this court.

8. I have considered the rival arguments in detail. At the outset, I must state that the contentions of the 2nd respondent lacks

conviction. Apart form Ext.R2(g), which is only a communication to the Private Secretary of the Minister, in which it is stated that the Director (Operations) of the 2nd respondent had opined that the performance of the petitioner is below average, no scrap of paper has been produced before me to prove the said contention. It is interesting to note that the respondents themselves have produced Ext.R2(f) direction issued to the petitioner to settle the accounts of M/s.Maithri SO. Although the petitioner has produced Ext.P19 reply to the same, specifically stating therein as to why he cannot comply with the said direction, apart from stating that Ext.R2(f) did not direct the petitioner to make payment to the said organisation flouting any rules and procedures, they have not chosen to give any answer to the specific reply given by the petitioner Ext.P19. In this connection, it would be fruitful to extract Ext.P19 as such which reads thus:

> *" In receipt of your written instruction to make payment to the SO, M/s.Maithri of Erimayur GP. You have asked the undersigned to settle the accounts of M/s.Maithri within five days and report compliance. Additionally, you have instructed me to avoid "such delays" in future. In this regard, this writer would like to inform you that he is not in a position to grasp where the delay part has occurred. I have not received the letter under reference or the copy of it (CO/WS/EMR/KRWSA/16 dated 4.10.05). It fails to fall within my logic as to how is it possible to release government funds without any rhyme or reason. In this case, the bills and cash receipts of newly purchased materials have not been produced at the DPMU by the SO. Naturally, the valuation cannot be finalized. MAS is also not submitted and hence the amount for balance*

> *material cannot be taken into account. The matter was brought into the notice of M/s.Maithri several times. The Director Mr.Vinod Krishnan and Team Leader Mr.Joji of M/s.Maithri were informed of this situation in person when they visited DPMU on 9.11.05. If you want me to release payment to M/s.Maithri without sufficient grounds, I still do not have any objection, provided Executive Director or Director(Finance) gives me an order to that effect in writing."*

9. In the absence of any specific answer to the petitioner's statements in Ext.P19, any reasonable or prudent individual would come to the natural conclusion that there was some bad blood between the petitioner and the Manager(Operations), as a result of Exts.R2(f) and P19, which certainly leads to an inference that the 2nd respondent had some improper motive to treat the petitioner as persona non grata.

10. In paragraph 2 of the counter affidavit, the specific averment of the 2nd respondent is as follows:

> *" As per the agreement with world bank, the entire projects under the Jalanidhi project should be completed and its operation and maintenance is to be handed over to the beneficiary group by December 2007."*

11. Going by the procedure adopted earlier in the case of recruiting the petitioner, for fresh appointment pursuant to Ext.P14 notification, applications have to be received, processed, persons interviewed, selected and trained for the project, which even according to the counsel for the 2nd respondent would take quite some time. If that

be so, one wonders as to why there should be such a process at all, if the project itself has to be completed by December 2007. The more prudent course in the circumstances would certainly be to extend the period of deputation of the petitioner. This is also a circumstance, which would prompt me to come to the conclusion that the decision taken by Ext.P16 by the 2nd respondent is not quite bona fide and there is something more that what meets the eye. In the judgment in OP.No.8562/02, the learned Single Judge of this court has held as follows:

> *"3. I heard both sides. Since the impugned order showed that the petitioner is shown the door for his continued inefficient functioning notwithstanding timely warning by the respondents, I directed the third respondent to produce the files relating to the termination of the petitioner. The files would show that the petitioner was never served with any memo or notice pointing out his inefficiency in performance. A letter containing assessment of the performance of various employees was also produced before me. The same only shows the conclusion of the Assessing Officer. From the files I could find no materials to show that the petitioner has been given a fair warning so that he could improve himself. But the respondents submit he has been orally warned."*
>
> *4. The appointment of the petitioner to the third respondent society is on deputation as provided under Chapter XI Part I KSR. Normally he is entitled to continue in service for a period of one year for which he was appointed on deputation. Of course for valid grounds he can be terminated before his tenure is over. But when a public authority acts it has an obligation to act fairly. The decisions and other materials should form part of the files also so that it could be reviewed by a superior authority or by this Court.*

As stated above there is absolutely no material in the file to show that the petitioner's functioning is poor or that he has been told of that. So, as pleaded by the petitioner practically, one fine morning he is told that his services are no longer required. The case of oral warning is denied by the petitioner.

5. Since the petitioner's service was terminated on the basis of certain allegations regarding his inefficiency, he should definitely have been served with a memo pointing out his deficiencies to give him a chance. The procedure followed by the respondents in this case is grossly arbitrary and unjust. The respondents would point out that the decision of the second respondent has been approved by the Chairman and later by the Government also. But that will not improve the impugned order. It has been issued in violation of the principles of natural justice. The decision making process was unjust and arbitrary. If that order is upheld, a person on deputation can be sent out by saying that the competent authority has told a dozen times to improve his performance and even thereafter he did not improve. Therefore I quash Ext.P8. It is declared that the petitioner is deemed to be in service all along. He is entitled to all consequential benefits. But this will not stand in the way of the respondents from taking action against the petitioner in accordance with law. The learned counsel for the second respondent pointed out that a substitute has been appointed in the place of the petitioner. In every case of wrongful termination there is the chance of appointment of a substitute in that vacancy. Such appointment will not validate an invalid termination. So the said contention is devoid of any merit and it is rejected."

12. This has been confirmed by the Division Bench also in W.A.No.2600/2002. Following that judgment, it goes without saying that unless the 2nd respondent shows before me by some cogent material that there was sufficient reason for holding that the petitioner was in fact

inefficient in his work and that the petitioner was appraised of this fact, the respondents cannot take that as a ground for not extending the deputation period of the petitioner. Therefore, the 2nd respondent cannot now hold that the reason for not extending the deputation of the petitioner is his inefficiency, in the absence is absolutely no material on record to prove the allegation. In Ramakrishnan's case(Supra) the Supreme Court held as follows:

> *" Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to old the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice."*

13. Going by the ratio of the above judgment, I am satisfied that this is a fit case where the 2nd respondent should reconsider its decision in the light of the observations made above. Accordingly, I quash Ext.P16 and direct the 2nd respondent to reconsider the case of the petitioner for extension of his deputation period. While doing so, the 2nd respondent shall specifically bear in mind my findings in Ext.P3

judgment regarding the necessity to try to accommodate at least one employee of a sick unit of the Government, which is the duty of the Government. In fact, that appears to be what prompted the concerned Minister to write to the 2nd respondent by Ext.P34 to re-examine the case of the petitioner which shall also be borne in mind while disposing of the matter. Appropriate orders in this regard shall be passed, within one month from the date of receipt of a copy of this judgment. It goes without saying that no appointments shall be made pursuant to Ext.P14 till orders are passed as above.

(S. SIRI JAGAN, JUDGE)

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